IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.4630 OF 1998

1.Colonel Sambhaji Patil
of Pune, Indian Inhabitant
Residing at 14/106
Agarkarnagar, Pune 411001.

2.Group Captain P.S.Pardeshi
of Pune, Indian Inhabitant
Residing at A 2/10, Tridal Nagar
Yervada, Pune.

3.M.A.Wadke of Pune
Indian Inhabitant,
Residing at C/o.14/106,
Agarkar Nagar, Pune 411001 ..Petitioners

Vs.

1.State of Maharashtra
through the Secretary Revenue
and Forest Department,
Mantralaya, Mumbai 400 032.

2.Smt. Laxmibai Bapu Wani
of Pune, Indian Inhabitant
Residing at D-53, M.G.Road,
Lonawala, Tal: Mawal, Dist:Pune

3.The Talati Mouje Devdhar
Mulashi, Dist: Pune ..Respondents

Mr.V.C.Shah i/b. M/s. L.C.Tolat & Co. for Petitioners

Mr.C.R.Sonawane, A.G.P. for Respondent Nos.1 & 3

Mr.A.V.Chatuphale for Respondent No.2.

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 22ND FEBRUARY, 2005.

JUDGMENT (PER F.I.REBELLO,J.)

. Petitioners by the present petition have challenged the legality and validity of the order

dated 16th April, 1998 passed by the Designated Member of Maharashtra Revenue Tribunal, Pune-I and proceeding initiated there under by Respondent no.3 by notice dated 21st July, 1998. An ad-interim order was initially granted on 1st September, 1998 by granting Rule on 24th November, 1998 interim relief was granted in terms of prayer clause (b) and (c).

2. It is the case of the petitioners that several lands belonging to Respondent no.2 were declared to be surplus by order of 26th May, 1970 and the notification came to be issued on 18th June, 1970. From the lands which were declared surplus the Tahasildar Mulashi by an order dated 27th January, 1992 distributed to each of the petitioner Nos.1 and 2 and late Vadke who were Ex-services personnel 3 hectares under Section 27 of the Maharashtra Agricultural lands (Ceiling and holding) Act, 1961 (herein after referred to as the Act). Each of them was allotted three hectors in land bearing Survey No.23. By subsequent order dated 11th June, 1993 the allotment of land to the petitioners was modified and instead part of Survey no.23 admeasuring one hector were excluded and instead one hector each from survey no.21/2 was allotted in favour of the petitioners. By subsequent order of 26th March, 1997 Tahasildar

Mulshi exchanged the lands earlier allotted under survey no.23(1) and survey no.21 against the lands in survey no.30 admeasuring three hectors and possession was given to the petitioners. Subsequently directions were given for change in 7x12 records.

. It is then set out that the Respondent no.2 against the order declaring survey no.30 as surplus had preferred an appeal before the Maharashtra Revenue Tribunal. That appeal came to be disposed of by order of 16th April, 1998. The appeal was allowed and it was held that survey no.30 was not agricultural land and therefore, could not have been considered as surplus and consequent directions were also given.

3. At the hearing of the petition, on behalf of the Petitioners their learned Counsel contends that they were persons interested and consequently Respondent no.2 ought to have joined them as parties in the proceedings before the trial Court. That having not been done the matter ought to be remanded back to the Tribunal for re-hearing on that point to the Tribunal to give opportunity to the Petitioners herein.

4. The petition was admitted in the year 1998.

We have heard learned Counsel for the parties. In order to appreciate the contention whether an order of remand would serve any purpose, we sought information from learned Counsel for the petitioners as to whether the land allotted had been cultivated and if there be any documentary evidence to show that the land is cultivated land. Counsel on instructions makes a statement that the land has not been put to agricultural use. The finding by the Tribunal is based on the records that the lands for the past 40 years were not cultivable and apart from that was described in the documents as pot and barren land. The panchanama also shows to the same effect. Once that be the case no purpose would be served in remanding the matter. After setting out the facts the Tribunal in the impugned order also referred to various judgments of the Apex Court for considering the tests as to whether the land is agricultural land. Considering that the land could not be put to any agricultural purpose we do not think that any purpose would be served in remanding the matter. Considering that Rule will have to be discharged.

5. The fact however remains that the petitioners had been allotted land. In these circumstances the petitioners within four weeks from today to apply to the Competent Authority for

allotment of any surplus land which may be available. If there be available lands, Respondents 1 and 3 are directed to consider the application for allotment and pass necessary orders thereon as expeditiously as possible.

. With the above observations Rule discharged. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)